In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 950

UNITED STATES OF AMERICA, PETITIONER

v.

THE LEITER MINERALS, INC.

No. 951

THE CALIFORNIA COMPANY, ET AL., PETITIONERS

v.

THE LEITER MINERALS, INC.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONSE OF THE UNITED STATES AND OF THE CALIFORNIA COMPANY, ET AL. TO THE MOTION OF ALMA BURAS, ET AL. FOR JOINDER AS ADDITIONAL PARTIES RESPONDENT

The Solicitor General on behalf of the United States of America and The California Company, *et al.*, by their attorney, join in the motion of Alma Buras, *et al.*, filed herein on April 26, 1965, praying that movers be joined as parties respondent and that this Court recognize and protect their interests.

This cause is now pending in this Court on peti-

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tions for certiorari, filed March 3, 1965. Briefs in opposition have not yet been filed.

This cause originated in a suit brought by the United States to quiet title against respondent, The Leiter Minerals, Inc., to the mineral rights in some 9,000 acres of valuable oil-producing lands in Louisiana. The court of appeals, reversing a judgment of the district court in favor of the United States, held that respondent, The Leiter Minerals, Inc., owned the mineral rights.

During the pendency of the case in the district court, The Leiter Minerals, Inc., transferred to the Buras heirs an undivided one-half interest in its claim to the minerals in 1,220 acres of these lands. The Buras heirs did not become parties to the suit.

After the filing of the petitions for certiorari, negotiations with respondent, The Leiter Minerals, Inc., pointed to a settlement of the case as to that company, which has now been consummated. The Buras heirs did not then join in the settlement, but filed the present motion to protect their interests.

At the time the Buras motion was filed it was well founded. Rule 25(c), *supra*,[1] expressly provides that an action may be continued by the original party after transfer of his interest. *See Unison Realty Corporation v. RKO Theatres, Inc.*, 35 F.R.D. 232 (S.D.N.Y.). The interests of the Buras heirs in this

[1] Rule 25(c), Federal Rules of Civil Procedure:

"In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. * * *"

litigation, as transferees of an undivided one-half interest in 1,220 acres of the land in controversy, had been adequately represented without their being parties to the suit until The Leiter Minerals, Inc., agreed to settle its claim. Upon such settlement it became appropriate that the Buras heirs be made parties in order to protect their continuing interests. See *Jones* v. *Cunningham*, 371 U.S. 236; *Mosser* v. *Darrow*, 341 U.S. 267. Although the Federal Rules of Civil Procedure expressly govern only the district courts (Rule 1), they sanction the procedure followed by the Buras heirs and may be followed by this Court where appropriate. See, *e.g.*, *Mullaney* v. *Anderson*, 342 U.S. 415. The related remedy of intervention is also available where representation by existing parties is inadequate to protect the intervenor's interest. See *United States* v. *St. Louis Terminal*, 236 U.S. 194; *Wolpe* v. *Poretsky*, 144 F. 2d 505 (C.A.D.C.), certiorari denied, 323 U.S. 777.

The Buras heirs have now settled their claims involved in this litigation. Nevertheless, it seems appropriate that they, being parties in interest, should be added as parties respondent to permit their joinder in the suggestion of mootness and motion for disposition of the cause which all parties are filing simultaneously herewith.

The Solicitor General is authorized by counsel for respondent to state that respondent does not oppose the granting of the Buras motion.

(S) Archibald Cox,
ARCHIBALD COX,
Solicitor General.

(S) Francis R. Kirkham,
FRANCIS R. KIRKHAM,
Attorney for The California Company, et al.

MAY 1965.

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